

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DAVID HIGGINS, JR.,

Defendant-Appellant.

UNPUBLISHED

November 13, 2003

No. 240825

Wayne Circuit Court

LC No. 01-006470-01

Before: Gage, P.J., and White and Cooper, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of felon in possession of a firearm, MCL 750.224f; and possession of a firearm during the commission of a felony, MCL 750.227b. Defendant was sentenced to two years' probation for the felon in possession conviction, and a concurrent term of two years' imprisonment for the felony-firearm conviction. Defendant appeals as of right. We affirm.

On May 22, 2001, Lieutenant Charles Flanagan responded to a radio call regarding shots fired at a home in Detroit. After arriving at the home, Lieutenant Flanagan stated that he heard yelling from inside the house, saw a bullet-riddled vehicle in the driveway, and observed approximately eighty to a hundred spent shell casings on the ground outside of the home. Shortly thereafter, Lieutenant Flanagan witnessed defendant exit the house with an assault rifle, fire the weapon in the air, and then fire approximately fifteen to eighteen rounds at the houses on the opposite side of the street. After defendant returned to his home, Lieutenant Flanagan heard more shots coming from inside the residence.

When backup officers arrived, Lieutenant Flanagan testified that he approached the home and knocked on the front door. Receiving no answer, Lieutenant Flanagan attempted to open the front door, which was restrained by a safety chain. Although the chain prevented Lieutenant Flanagan from entering, he was able to see defendant, unarmed, in the living room. At this point, Lieutenant Flanagan broke the chain, entered the home and arrested defendant. A subsequent search of the residence uncovered four rifles.

On appeal, defendant argues that the trial court erroneously refused to suppress the evidence seized from defendant's home when the police officers failed to follow the knock-and-announce statute, MCL 780.656. We disagree. Because defendant failed to specifically and

timely object to the admission of this evidence as a violation of the knock-and-announce statute, our review is limited to plain error affecting his substantial rights.¹

The knock-and-announce statute provides as follows:

The officer to whom a *warrant* is directed, or any person assisting him, may break any outer or inner door or window of a house or building, or anything therein, in order to execute the *warrant*, if, after notice of his authority and purpose, he is refused admittance, or when necessary to liberate himself or any person assisting him in execution of the *warrant*.^[2]

By its plain terms, the knock-and-announce statute only applies to situations involving the execution of a warrant.³ Defendant has failed to cite any authority to support his position that Michigan requires knock-and-announce principles be followed during a warrantless arrest.⁴ Because the knock-and-announce statute is inapplicable we find no plain error.⁵ Regardless, even assuming a violation of the knock-and-announce statute in this case, we note that suppression of the evidence would not be an available remedy.⁶

To the extent defendant raises a violation of his Fourth Amendment rights, we conclude that Lieutenant Flanagan's actions in this case were reasonable. "A police officer may arrest an individual without a warrant if a felony has been committed and the officer has probable cause to believe that the individual committed the felony."⁷ Exigent circumstances are an exception to the warrant requirement.⁸ Similarly, noncompliance with the knock-and-announce statute "will be excused '[i]f the police officers have a basis to conclude that . . . lives will be endangered by'" a violation of the statute.⁹

¹ *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999); see also MRE 103(a)(1). We note that defendant did not object to the admission of this evidence until his case in chief.

² MCL 780.656 (emphasis added).

³ See *People v Phillips*, 469 Mich 390, 394-395; 666 NW2d 657 (2003) (holding that the primary goal in construing a statute is to ascertain and give effect to the Legislature's intent as plainly stated in the statute).

⁴ See *People v Mackle*, 241 Mich App 583, 604, n 4; 617 NW2d 339 (2000).

⁵ *Carines*, *supra* at 763-764.

⁶ *People v Hudson*, 465 Mich 929, 932; 639 NW2d 255 (2001); *People v Stevens (After Remand)*, 460 Mich 626, 644-645; 597 NW2d 53 (1999).

⁷ *People v Kelly*, 231 Mich App 627, 631; 588 NW2d 480 (1998); see also MCL 764.15(1)(c).

⁸ *People v Cartwright*, 454 Mich 550, 558-559; 563 NW2d 208 (1997).

⁹ *People v Williams (After Remand)*, 198 Mich App 537, 545; 499 NW2d 404 (1993), quoting *People v Polidori*, 190 Mich App 673, 677; 476 NW2d 482 (1991).

Here, Lieutenant Flanagan witnessed defendant fire several rounds of ammunition at other homes in the area. Lieutenant Flanagan also testified that he heard several shots being fired from inside defendant's home. These facts support the conclusion that probable cause to arrest defendant existed in this case and that the exigent circumstances justified the police officers' warrantless entry of defendant's home.¹⁰

Affirmed.

/s/ Hilda R. Gage
/s/ Helene N. White
/s/ Jessica R. Cooper

¹⁰ See *Polidori*, *supra* at 677.